

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0018

FILED

Case Number: DA 16-0018

T. WARREN SCHWEITZER and INGELA
SCHNITTGER,

Appellants,

v.

CITY OF WHITEFISH,

Appellee.

NOV 22 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

Appellants T. Warren Schweitzer and Ingela Schnittger have filed a petition for rehearing of the Court's opinion issued on October 11, 2016, affirming the District Court's application of res judicata or claim preclusion to their 2014 declaratory action, which challenged the City of Whitefish's denial of their second de-annexation petition. Appellants argue that the Court overlooked the fact that their 2010 declaratory action asserted that the City had failed to follow the requirements of § 7-2-4805, MCA, while the focus of their 2014 action was different: that their second de-annexation petition *complied with* the requirements of the same statute. The City responds that, "[i]t is axiomatic that if Appellants' [2014 de-annexation petition] complied with Mont. Code Ann. § 7-2-4805 then the City failed to comply with the statute in denying the petition"—the same essential allegation made by Appellants in their 2010 declaratory action. Appellants reject this comparison, and have filed a request to suspend the rules to permit them to file a reply to the City's objections to their rehearing petition.

It is unnecessary to suspend the rules to permit Appellants to reply to the City's objections because the basis of Appellants' reply is provided in their request to suspend the rules: that the City erred in denying their second de-annexation petition because it relied on incorrect facts, which is a different basis than the denial of their first de-annexation petition. However, all of Appellants' claims, from both the 2010 and 2014

actions, and the facts that the City allegedly stated incorrectly when denying the second de-annexation petition, were construed in Appellants' favor, considered by the Court in the Opinion, and were determined not to preclude application of res judicata. These facts did not change the conclusion that the allegations of the annexation petitions and the declaratory actions were not materially different. Claim preclusion is not avoided by reframing the same legal issues. *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 25, 331 Mont. 281, 130 P.3d 1267.

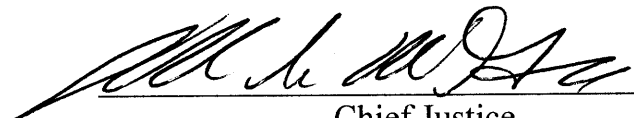
Appellants argue that property owners are not precluded by statute from filing successive de-annexation petitions, and argue that Appellants must now "endure this wrong irrespective of the duration of it into the future." However, nothing in the Opinion prohibits the filing of successive de-annexation petitions with the City. The basis of the Opinion is that the legal issue or basis of the 2014 declaratory action, though pled slightly differently, was not materially different than the legal basis of the 2010 declaratory action, thus requiring application of claim preclusion.

Therefore,

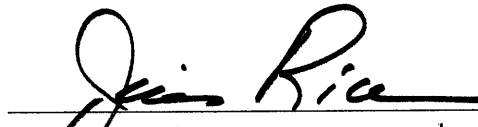
IT IS ORDERED that the petition for rehearing is DENIED.

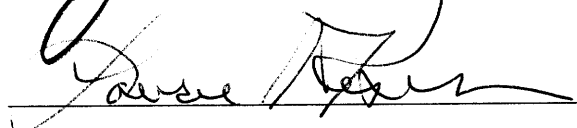
The Clerk of Court is directed to mail copies hereof to all counsel of record.

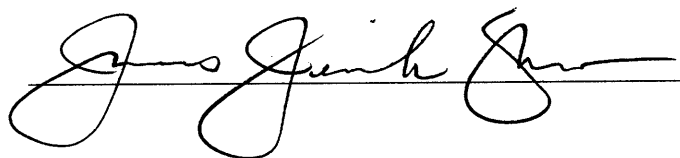
DATED this 22nd day of November, 2016.



Chief Justice







Justices